

ATTACHMENT A

FIRST AMENDMENT TO DISASTER RECOVERY SERVICES AGREEMENT

Project/Services Name: Land Use and Management Plan for Buyout Properties

This **FIRST AMENDMENT TO THE DISASTER RECOVERY SERVICES AGREEMENT** (the "First Amendment") is made and entered into by and between the **TOWN OF LYONS**, a statutory municipal corporation of the State of Colorado with offices at 432 5th Avenue, Lyons, Colorado 80540 (the "**Town**"), and **BISHOP AND LAYTON DESIGN, INC.**, a Colorado corporation doing business as Design Concepts CLA Inc., with business offices at 211 North Public Road, Suite 200, Lafayette, Colorado 80026 (the "**Contractor**"). The Town and the Contractor are individually referred to herein as a "Party" and collectively referred to herein as the "Parties."

WHEREAS, the Parties entered into that certain Disaster Recovery Services Agreement dated November 7, 2016 (the "Agreement") for Contractor to prepare a land use and management plan for properties acquired by the Town pursuant to the federal buy-out program (the "Project"); and

WHEREAS, the Agreement currently provides for a not-to-exceed compensation in the amount of One Hundred Forty-Seven Thousand Six Hundred Dollars and No Cents (\$147,600.00); and

WHEREAS, Contractor performed additional work pertaining to the Project (the "Additional Work") that resulted in an increased cost to complete the Project; and

WHEREAS, at its January 16, 2018 meeting, the Town Board of Trustees considered Contractor's request to increase the compensation set forth in the Agreement, and agreed to pay Contractor an additional Twelve Thousand Four Hundred Dollars and No Cents (\$12,400.00) in consideration of the additional work performed by Contractor; and

WHEREAS, Sections 1.3 of the Agreement provides that any changes to the scope of services shall be in writing, and Section 10.12 of the Agreement requires that amendments to the Agreement be in writing and signed by both Parties; and

WHEREAS, the Parties desire to amend the Agreement to add the Additional Work to the Scope of Services and to increase the not-to-exceed price in the Agreement by Twelve Thousand Four Hundred Dollars and No Cents (\$12,400.00), which will increase the compensation in the Agreement to a new total amount of **One Hundred Sixty Thousand Dollars and No Cents (\$160,000.00)** as full compensation for all work performed by Contractor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties hereto, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

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- 1.0 Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference as though set forth in full.
- 2.0 Exhibit A-1/B-1 Incorporated. **Exhibit A-1/B-1**, a copy of which is attached to this First Amendment, is hereby incorporated into **Exhibit A** and **Exhibit B** of the Agreement.
- 3.0 Increased Compensation. The first two sentences of Section 2.0 of the Agreement are hereby amended in their entirety to read as follows:
- 2.0 Commencement of and Compensation for Services. Following execution of this Agreement by the Town, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A** and **Exhibit A-1**, as amended, subject to the requirements and limitations on compensation as provided by this Section 2.0 and its subsections. Compensation to be paid hereunder shall not exceed **One Hundred Sixty Thousand Dollars and No Cents (\$160,000.00)** unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement.
- 4.0 No Further Amendments. Nothing contained in this First Amendment shall affect any other provisions of the Agreement except as specifically set forth herein. In the event of any conflict between this First Amendment and the Agreement, the terms of this First Amendment shall prevail.
- 5.0 Force and Effect of Amendment. Notwithstanding anything in the Agreement to the contrary, the Agreement shall be amended such that all references in the Agreement to the "Agreement" shall refer to the Agreement, as amended by the First Amendment. Except as set forth in the First Amendment, the terms and conditions of the Agreement shall remain unchanged and in full force and effect.
- 6.0 Conflict. This First Amendment is and shall be construed as a part of the Agreement. In case of any inconsistency between this First Amendment and the Agreement, the provisions containing such inconsistency shall first be reconciled with one another to the maximum extent possible, and then to the extent of any remaining inconsistency, the terms of this First Amendment shall control.
- 7.0 Counterparts; Facsimile or Electronic Signature; Authority. The parties hereto agree that this First Amendment may be executed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The parties further agree that this First Amendment may be executed by facsimile or electronic signature, and that any facsimile or electronic signature shall be binding upon the party providing such signature as if it were the party's original signature.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Disaster Recovery Services Agreement, to be effective as of the date of mutual execution by the Parties.

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By the signature of its representatives below, each Party affirms that it has taken all necessary action to authorize said representative to execute this First Amendment.

TOWN OF LYONS, a statutory municipal
corporation of the State of Colorado

By: _____
Connie Sullivan, Mayor

Date of execution: _____, 2018.

ATTEST:

Debra K. Anthony, Town Clerk

APPROVED AS TO FORM (Excluding Exhibits)

For Town Attorney's Office

**BISHOP AND LAYTON DESIGN, INC., dba
DESIGN CONCEPTS CLA, INC.**, a Colorado
corporation

By: _____

Printed name: _____

Title: _____

Date of execution: _____, 2018

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was executed before me this ____ day of _____, 2018,
by _____ as _____ of **BISHOP AND
LAYTON DESIGN, INC., dba DESIGN CONCEPTS CLA, INC.**, a Colorado corporation.

My commission expires: _____

[SEAL]

Notary Public

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EXHIBIT A-1/B-1



DESIGN
CONCEPTS

Community + Landscape Architects

EXHIBIT A-1/B-1

January 8, 2018

Paul Glasgow
Director of Community Development
Town of Lyons
432 5th Avenue
Lyons, CO 80540

Re: Add-Service Funding Request

Dear Paul:

Design Concepts started work with the Town of Lyons in November 2016 to develop the *Lyons Land Use & Management Plan for Deed Restricted Buy-Out Properties* ('DRBOP Plan'). We have met all requirements of our contract scope, and by any estimation, led a successful project. The opinion of many local citizens who have commended us privately and publicly is that our process and deliverables have exceeded all expectations.

Several aspects of the project that Town staff directed us to continue involved more time and materials than originally scoped. These include:

- **The nationally unprecedented licensure program and supporting materials:** This effort included legal coordination, Town Board involvement, document drafts, staff policy development, and graphic design to an extent well beyond what was scoped. The product has been so well received that these documents are being submitted by the Town for an award.
- **Planning of the Martin Property to explore potential for revenue generating uses on site:** After extensive discussion with Town staff we agreed to conduct several additional public meetings and undertook additional coordination toward convincing the public that this type of use could be beneficial. Ultimately the process yielded the same public resistance to the impacts of revenue bearing uses as it did when we originally proposed the idea.
- **Site grading and hydraulic modeling for construction as part of already funded earthwork:** Grading design was intended to dovetail with flood mitigation earthwork already planned, with new landforms intended create a more dynamic user experience. Flood recovery work was scheduled for late spring 2017 to build an overflow channel in the St. Vrain River confluence. We coordinated acquisition of HEC-RAS CAD files, undertook initial grading design, and worked with Amec Foster Wheeler, our civil engineer, to model a context sensitive plan.
- **Public process including more than 30 public forum meetings:** Our original scope of work outlined a robust public process. As the project unfolded, the extent and number of meetings requested by staff to ensure success was far more than was offered within scope.

These efforts were undertaken only after discussion with Town staff including Matt Manley, Dave Cosgrove, Joe Kubala, and Paul Glasgow. At staff's direction, since it was recognized that our efforts were beyond scope, a proposal was submitted to the Colorado Department of Local Affairs to allocate the balance of funds originally approved (an additional \$12,400 to total \$160,000) and budgeted for this project. After

initial review, DOLA outlined changes to the proposal. It was revised and resubmitted. The request was surprisingly denied, likely due to emergency relief efforts by FEMA to address hurricane damage in Texas.

Although the Town had originally received greater funding than our budget, we requested only the amount needed for our scope at project start. We agreed with the original Town Planner, Matt Manley, that the balance could be applied to the project if needed as the plan developed. By rejecting our proposal, DOLA stripped us of this additional budget to complete our work.

To date our small consulting firm is more than \$23,000 over budget. **It would require a total of \$21,000 to prevent actual loss on the project. We request from Town of Lyons payment for the amount that we had solicited from DOLA, a total of \$12,400.** Please acknowledge our actual billable overage as you consider this more modest request.

We have delivered the highest quality services and product. Design Concepts has effectively been funding the project since September 2017. We did not undertake the additional work outlined without direction, nor did it benefit our office. The unfortunate fact that a hurricane diverted all FEMA funds that DOLA was likely counting on should not leave a small, local consultant entirely responsible for efforts that did benefit the Town. This is especially true following a widely successful effort.

It has been a pleasure to work with the Lyons community over the last year. We are thrilled the DRBOP Plan was recently approved unanimously by the Town Board of Trustees. Our Design Concepts team was personally and professionally invested in this project. We were happy to produce an unprecedented final product that will be highly beneficial to the future of Lyons.

We request that Town recognize our commitment to this project and support our efforts to recoup these losses.

Very Truly Yours,



Axel Bishop
Principal
axel@dcla.net
January 8, 2018